

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION**

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|-------------------------------|---|---------------------------------------|
| ERIC LICON | § | |
| Plaintiff, | § | |
| V. | § | |
| | § | CIVIL ACTION NO. 7-22-CV-00051 |
| SINGH JASWINDER, | § | |
| SANDEEP KAUR BRAR, AND | § | |
| MKS TRANSPORT, INC. | § | |
| Defendants. | § | |

DEFENDANT MKS TRANSPORT, INC.'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332(a)(1) and 1446(a), Defendant MKS TRANSPORT, INC. files this *Notice of Removal* of the above-described action to the United States District Court for the Western District of Texas, Midland/Odessa, Division, and in support therefore respectfully states the following:

I.
Introduction

1. Plaintiff filed a personal injury suit against MKS Transport, Inc. and two individual people in Texas state court arising out of a motor vehicle collision that occurred on or about March 31, 2020. Plaintiff asserts causes of action for negligence and negligence *per se* against individual defendant Singh Jaswinder. Plaintiff asserts a cause of action for negligent entrustment against individual defendant Sandeep Kaur Brar. Plaintiff asserts negligence, negligence *per se*, respondeat superior, and direct negligence (hiring, training) claims against Defendants MKS Transport, Inc. and Sandeep Kaur Brar.

2. All Defendants have appeared in the case by filing an answer to Plaintiff's First Amended Petition in State Court.

3. Defendant MKS Transport, Inc. desires to exercise its statutory right pursuant to 28 U.S.C. §1441 et seq. to remove the state court action to this Federal Court. The state suit is styled *Eric Licon v. Singh Jaswinder, Sandeep Kaur Brar, and MKS Transport, Inc.*, Cause No. D-22-01-0030-CV, originally filed in the 358th Judicial District Court of Ector County, Texas (“State Court Action”). See *State Court Action* at **Exhibit A**, page “MKS REMOVAL 002.”

4. Plaintiff filed his First Amended Petition on January 11, 2022. This is the initial pleading that was served on Defendant MKS Transport, Inc. *Affidavit of Service* and *Citation* at **Exhibit A**, at page “MKS REMOVAL 010-012”; *Affidavit of Sandeep Kaur Brar* at **Exhibit B**.

5. Defendant MKS Transport, Inc. received citation and a copy of Plaintiff’s First Amended Petition on February 7, 2022, by certified mail, return receipt requested from the Texas Secretary of State as a statutory agent. See *Affidavit of Service* and *Citation* at **Exhibit A**, at page “MKS REMOVAL 010-012”; *Affidavit of Sandeep Kaur Brar* at **Exhibit B**; see also *Bowen v. Wells Fargo Bank, N.A.*, No. SA-21-CV-01076-XR, 2021 WL 5822833, at *2 (W.D. Tex. Dec. 8, 2021) (explaining that when service is effected on a statutory agent such as the Texas Secretary of State, the actual date a defendant receives the process is when the removal period begins, not when the statutory agent receives process) (citing *Monterey Mushrooms, Inc. v. Hall*, 14 F. Supp. 2d 988, 991 (S.D. Tex. 1998)).

6. Defendant’s notice of removal is being filed within thirty days after receipt of the initial pleading served upon Defendant; therefore, this matter is being timely removed under 28 U.S.C. § 1446(b)(1).

7. Defendants Sandeep Kaur Brar and Singh Jaswinder consent to the removal of this case from State Court to this Federal Court. See *Consents to Removal* at **Exhibits C and D**.

II.
Basis for Removal

8. Removal is proper because there is complete diversity among the parties and the actual amount in controversy exceeds \$75,000.

9. Plaintiff Eric Licon is a natural person and citizen of Texas, domiciled and residing in Midland County, Texas. *See State Court Action, Exhibit A*, page "MKS REMOVAL 002", at para. 3.

10. Defendant MKS Transport, Inc. is a California company with its principal place of business in the State of California at 8060 N. Glenn Ave. Apt. 131, Fresno, California, 93711. Defendant MKS Transport, Inc. is therefore a citizen of California.

11. Defendant Singh Jaswinder is a natural person and citizen of California, domiciled and residing in Fresno County, California. *See State Court Action*, at para. 4. Plaintiff attempted to serve Defendant Jaswinder through the Chairman of the Texas Transportation Commission. *Transportation Commissioner Certificate at Exhibit A*, page "MKS REMOVAL 016." Whether or not service was proper, Defendant Jaswinder has appeared in the State Court Action by filing an answer to Plaintiff's First Amended Petition. *Defendants' State Answer at Exhibit E.*

12. Defendant Sandeep Kaur Brar is a natural person and citizen of California, domiciled and residing in Fresno County, California. *See State Court Action* at para. 5. Plaintiff attempted to serve Defendant Brar through the Chairman of the Texas Transportation Commission. *Affidavit of Service and Citation at Exhibit A*, pages "MKS REMOVAL 013-014." Whether or not service was proper, Defendant Brar has appeared in the State Court Action by filing an answer to Plaintiff's First Amended Petition. *Defendants' State Answer at Exhibit E.*

13. The actual amount in controversy exceeds \$75,000 based on the petition in the State Court Action, which alleges "...Plaintiff seeks monetary relief in excess of \$250,000, but less than \$1,000,000." *State Court Action* at para. 20.

14. Defendant has established that the actual amount in controversy exceeds the \$75,000 threshold for diversity jurisdiction. Plaintiff can take no post-removal action limiting his damages that would deprive the Court of jurisdiction. *Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 292, 58 S. Ct. 586, 592, 82 L. Ed. 845 (1938).

15. The removal is proper under 28 U.S.C. §§ 1441 and 1446(b). The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a) because the parties are diverse of citizenship and the actual amount in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs.

16. Venue is proper in this district under 28 U.S.C. § 1441(a) because this district and division embrace the place where the removed action has been pending.

17. Defendant has tried for multiple days but has been unable to obtain information online from the Ector County District Court web portal. *See Court Access Information at Exhibit F.* Upon information and belief, the web portal is experiencing technical difficulties at this time like many courts in Texas that use the Oddessy platform. Defendant has provided the best copies available to it, which are from Plaintiff's counsel. *See Fax from Plaintiff's Counsel at Exhibit A.* Defendant will supplement with any pleadings, process, orders and other filings in the State Court Action as may be required by this Court. The following documents are attached hereto as separate exhibits:

- (a) A separately signed certificate of interested persons [**Exhibit G**];
- (b) A completed civil cover sheet [**Exhibit H**];

(c) A supplemental civil cover sheet [**Exhibit I**].

18. Defendant, as removing party, is hereby providing all parties written notice of the filing of its original Notice of Removal as required by 28 U.S. C. §1446(d) and will promptly file a copy of its *Notice of Removal* with the clerk of the County Court for Ector County, Texas, where the State Court Action is pending.

III.
Jury Demand

19. Plaintiff demanded a jury in the State Court Action. *State Court Action* at para. 2.

IV.
Conclusion

WHEREFORE, pursuant to the foregoing statutes and in conformance with the requirements as set forth in 28 U.S.C. § 1446, Defendant MKS Transport, Inc. requests the Court to remove the case styled *Eric Licon v. Singh Jaswinder, Sandeep Kaur Brar, and MKS Transport, Inc.*, Cause No. D-22-01-0030-CV, originally filed in the 358th Judicial District Court of Ector County, Texas, to this United States District Court for the Western District of Texas.

Respectfully submitted,

EKVALL & BYRNE, L.L.P.

BY: /s/ Erika K. Singler

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**ATTORNEY FOR DEFENDANT
MKS TRANSPORT, INC.**

CERTIFICATE OF SERVICE

On March 8, 2022, I electronically submitted the foregoing document to the clerk of court for the U.S. District Court, Western District of Texas, using the electronic case filing system (CM/ECF) of the court. I hereby certify that I have served all counsel of record electronically or by another manner authorized by the Federal Rules of Civil Procedure.

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/s/ Erika K. Singler
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